

Senate File 499 - Introduced

SENATE FILE 499

BY GUTH

A BILL FOR

1 An Act relating to the investment of certain public funds in
2 companies that are owned or controlled by Chinese military
3 or government services.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 12.8, subsection 1, Code 2021, is amended
2 to read as follows:

3 1. The treasurer of state shall invest or deposit, subject
4 to chapters 12F, 12H, and 12J, and 12K and as provided by law,
5 any of the public funds not currently needed for operating
6 expenses and shall do so upon receipt of monthly notice from
7 the director of the department of administrative services of
8 the amount not so needed. In the event of loss on redemption
9 or sale of securities invested as prescribed by law, and if
10 the transaction is reported to the executive council, neither
11 the treasurer nor director of the department of administrative
12 services is personally liable but the loss shall be charged
13 against the funds which would have received the profits or
14 interest of the investment and there is appropriated from the
15 funds the amount so required.

16 Sec. 2. NEW SECTION. 12K.1 Definitions.

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "*Company*" means a sole proprietorship, organization,
20 association, corporation, partnership, joint venture, limited
21 partnership, limited liability partnership, limited liability
22 company, or other entity or business association, including
23 all wholly owned subsidiaries, majority-owned subsidiaries,
24 parent companies, or affiliates of such entities or business
25 associations, that exists for profit-making purposes.

26 2. "*Direct holdings*" in a company means all securities of
27 a company held directly by the public fund or in an account or
28 fund in which the public fund owns all shares or interests.

29 3. "*Indirect holdings*" in a company means all securities
30 of a company held in an account or fund managed by one or more
31 persons not employed by the public fund, in which the public
32 fund owns shares or interests together with other investors not
33 subject to the provisions of this chapter. Indirect holdings
34 include but are not limited to mutual funds, fund of funds,
35 private equity funds, hedge funds, and real estate funds.

1 4. "*Prohibited company*" means a company that is owned or
2 controlled by Chinese military or government services and that
3 meets any of the following criteria:

4 a. The company has been designated by the United States
5 government as a company that citizens of the United States are
6 restricted or prohibited from entering into transactions with,
7 including a designation in any of the following lists:

8 (1) The bureau of industry and security's entity list.

9 (2) The bureau of industry and security's military end user
10 list.

11 (3) The department of defense's communist Chinese military
12 companies list.

13 (4) The office of foreign assets control's foreign
14 sanctions evaders list.

15 (5) The office of foreign assets control's list of foreign
16 financial institutions subject to correspondent account or
17 payable-through account sanctions.

18 (6) The office of foreign assets control's non-SDN Iran
19 sanctions list.

20 (7) The office of foreign assets control's non-SDN
21 Palestinian legislative council list.

22 (8) The office of foreign assets control's sectoral
23 sanctions identifications list.

24 (9) The office of foreign assets control's specially
25 designated nationals and blocked persons list.

26 b. The company has been sanctioned in any way by the United
27 States government.

28 5. "*Public fund*" means the treasurer of state, the state
29 board of regents, the public safety peace officers' retirement
30 system created in chapter 97A, the Iowa public employees'
31 retirement system created in chapter 97B, the statewide fire
32 and police retirement system created in chapter 411, or the
33 judicial retirement system created in chapter 602.

34 6. "*Scrutinized company*" means any company that is owned or
35 controlled by Chinese military or government services.

1 Sec. 3. NEW SECTION. 12K.2 Identification of companies —
2 notice.

3 1. a. Within sixty days following the effective date of
4 this Act, a public fund shall identify or have identified all
5 scrutinized companies in which the public fund has direct or
6 indirect holdings and shall create and make available to the
7 public a scrutinized companies list for that public fund.
8 The public fund shall review and update, if necessary, the
9 scrutinized companies list on a quarterly basis thereafter.
10 b. In identifying or having identified scrutinized
11 companies, the public fund may review and rely, in the best
12 judgment of the public fund, on publicly available information
13 and other information that may be provided by nonprofit
14 organizations, research firms, international organizations, and
15 government entities. The public fund may also contact asset
16 managers and institutional investors for the public fund to
17 identify scrutinized companies based upon industry-recognized
18 lists of such companies that the public fund may have indirect
19 holdings in.
20 c. The Iowa public employees' retirement system, acting
21 on behalf of the system and other public funds subject to
22 this section, may develop and issue a request for proposals
23 for third-party services to complete the identification of
24 scrutinized companies and the compilation of a scrutinized
25 companies list. The request for proposals may request bids for
26 optional services related to this purpose, including but not
27 limited to provision of notice of such scrutinized companies
28 as required in subsection 2. The Iowa public employees'
29 retirement system shall consult with all other public funds
30 regarding the development of the request for proposals, however
31 selection of a successful proposal and the final scope of
32 services to be provided shall be determined only by those
33 public funds that have agreed to utilize the third-party
34 services. If more than one public fund decides to utilize the
35 third-party services, the participating public funds shall

1 equally share the costs of such services.

2 2. For each company on the scrutinized companies list in
3 which a public fund has direct or indirect holdings, the public
4 fund shall send or have sent a written notice informing the
5 company of the requirements of this chapter. The public fund
6 or its representative shall continue to provide such written
7 notice on an annual basis if the company remains a scrutinized
8 company.

9 Sec. 4. NEW SECTION. 12K.3 Divestment.

10 1. A public fund shall not acquire publicly traded
11 securities of a prohibited company.

12 2. a. A public fund shall sell, redeem, divest, or withdraw
13 all publicly traded securities of a prohibited company no
14 later than sixty days following the date the company becomes a
15 prohibited company or the effective date of this Act, whichever
16 is earlier.

17 b. This subsection shall not be construed to require the
18 premature or otherwise imprudent sale, redemption, divestment,
19 or withdrawal of an investment, but such sale, redemption,
20 divestment, or withdrawal shall be completed as provided by
21 this subsection.

22 Sec. 5. NEW SECTION. 12K.4 Reports.

23 1. Each public fund shall, within thirty days after the
24 scrutinized companies list is created or updated as required by
25 section 12K.2, make the list available to the public.

26 2. On October 1, 2021, and each October 1 thereafter, each
27 public fund shall make available to the public, and file with
28 the general assembly, an annual report covering the prior
29 fiscal year that includes all of the following:

30 a. The scrutinized companies list as of the end of the
31 fiscal year.

32 b. A summary of all written notices sent as required by
33 section 12K.2 during the fiscal year.

34 c. All investments sold, redeemed, divested, or withdrawn as
35 provided in section 12K.3 during the fiscal year.

1 Sec. 6. NEW SECTION. 12K.5 Legal obligations.

2 With respect to actions taken in compliance with this
3 chapter, including all good-faith determinations regarding
4 companies as required by this chapter, the public fund
5 shall be exempt from any conflicting statutory or common law
6 obligations, including any such obligations with respect to
7 choice of asset managers, investment funds, or investments for
8 the public fund's securities portfolios.

9 Sec. 7. NEW SECTION. 12K.6 Applicability.

10 The requirements of sections 12K.2, 12K.3, and 12K.4 shall
11 not apply upon the occurrence of any of the following:

12 1. The United States congress or president of the United
13 States, through legislation or executive order, declares that
14 mandatory divestment of the type provided for in this chapter
15 interferes with the conduct of United States foreign policy.

16 2. A controlling circuit or district court of the United
17 States issues an opinion that declares the mandatory divestment
18 of the type provided for in this chapter or similar statutes
19 of other states is preempted by the federal law of the United
20 States.

21 Sec. 8. Section 97A.7, subsection 1, Code 2021, is amended
22 to read as follows:

23 1. The board of trustees shall be the trustees of the
24 retirement fund created by [this chapter](#) as provided in section
25 97A.8 and shall have full power to invest and reinvest funds
26 subject to the terms, conditions, limitations, and restrictions
27 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
28 [12K](#) and subject to like terms, conditions, limitations, and
29 restrictions said trustees shall have full power to hold,
30 purchase, sell, assign, transfer, or dispose of any of the
31 securities and investments of the retirement fund which have
32 been invested, as well as of the proceeds of said investments
33 and any moneys belonging to the retirement fund. The board
34 of trustees may authorize the treasurer of state to exercise
35 any of the duties of [this section](#). When so authorized the

1 treasurer of state shall report any transactions to the board
2 of trustees at its next monthly meeting.

3 Sec. 9. Section 97B.4, subsection 5, Code 2021, is amended
4 to read as follows:

5 5. *Investments.* The system, through the chief investment
6 officer, shall invest, subject to chapters 12F, 12H, and 12J,
7 and 12K and in accordance with the investment policy and
8 goal statement established by the board, the portion of the
9 retirement fund which, in the judgment of the system, is not
10 needed for current payment of benefits under this chapter
11 subject to the requirements of section 97B.7A.

12 Sec. 10. Section 262.14, unnumbered paragraph 1, Code 2021,
13 is amended to read as follows:

14 The board may invest funds belonging to the institutions,
15 subject to chapters 12F, 12H, and 12J, and 12K and the
16 following regulations:

17 Sec. 11. Section 411.7, subsection 1, Code 2021, is amended
18 to read as follows:

19 1. The board of trustees is the trustee of the fire
20 and police retirement fund created in section 411.8 and
21 shall annually establish an investment policy to govern the
22 investment and reinvestment of the moneys in the fund, subject
23 to the terms, conditions, limitations, and restrictions
24 imposed by subsection 2 and chapters 12F, 12H, and 12J, and
25 12K. Subject to like terms, conditions, limitations, and
26 restrictions the system has full power to hold, purchase, sell,
27 assign, transfer, or dispose of any of the securities and
28 investments in which the fund has been invested, as well as of
29 the proceeds of the investments and any moneys belonging to the
30 fund.

31 Sec. 12. Section 602.9111, subsection 1, Code 2021, is
32 amended to read as follows:

33 1. So much of the judicial retirement fund as may not be
34 necessary to be kept on hand for the making of disbursements
35 under this article shall be invested by the treasurer of

1 state in any investments authorized for the Iowa public
 2 employees' retirement system in [section 97B.7A](#) and subject to
 3 the requirements of [chapters 12F, 12H, and 12J](#), and [12K](#), and
 4 the earnings therefrom shall be credited to the fund. The
 5 treasurer of state may execute contracts and agreements with
 6 investment advisors, consultants, and investment management and
 7 benefit consultant firms in the administration of the judicial
 8 retirement fund.

9

EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
 11 the explanation's substance by the members of the general assembly.

12 This bill relates to the investment of certain public funds
 13 in companies that are owned or controlled by Chinese military
 14 or government services.

15 The bill defines "company" as any entity or business
 16 association, including all subsidiaries, parent companies, or
 17 affiliates of such entities or business associations, that
 18 exist for profit-making purposes. The bill defines "direct
 19 holdings" in a company as all securities of a company held
 20 directly by the public fund or in an account or fund in which
 21 the public fund owns all shares or interests. The bill defines
 22 "indirect holdings" in a company as all securities of a company
 23 held in an account or fund managed by one or more persons
 24 not employed by the public fund, in which the public fund
 25 owns shares or interests together with other investors not
 26 subject to the provisions of this new Code chapter 12K. The
 27 bill defines "prohibited company" as a company that is owned
 28 or controlled by Chinese military or government services and
 29 that meets criteria enumerated in the bill. The bill defines
 30 "public fund" as the treasurer of state, the state board of
 31 regents, the public safety peace officers' retirement system,
 32 the Iowa public employees' retirement system (IPERS), the
 33 statewide fire and police retirement system, or the judicial
 34 retirement system. The bill defines "scrutinized company" as
 35 any company that is owned or controlled by Chinese military or

1 government services.

2 The bill requires a public fund to identify all scrutinized
3 companies in which the public fund has direct or indirect
4 holdings within 60 days following the effective date of
5 the bill. Additionally, the bill requires a public fund
6 to create and make available to the public a scrutinized
7 companies list and review and update the list on a quarterly
8 basis. The bill authorizes a public fund to review and rely
9 on publicly available information and information from other
10 sources when identifying scrutinized companies. The bill also
11 authorizes IPERS to develop and issue a request for proposals
12 for third-party services to complete the identification of
13 scrutinized companies and the compilation of the scrutinized
14 companies list. The bill requires a public fund to send notice
15 to all companies on the scrutinized companies list on an annual
16 basis informing the company of the requirements of the new Code
17 chapter.

18 The bill prohibits a public fund from acquiring publicly
19 traded securities of a prohibited company. The bill requires a
20 public fund to sell, redeem, divest, or withdraw all publicly
21 traded securities of a prohibited company no later than 60 days
22 following the date the company becomes a prohibited company, or
23 the effective date of the bill, whichever is earlier.

24 The bill requires each public fund, within 30 days after the
25 scrutinized companies list is created or updated, to make the
26 list available to the public. Additionally, the bill requires
27 a public fund to make available to the public and file with the
28 general assembly an annual report beginning October 1, 2021,
29 and each October 1 thereafter.

30 The bill provides that, with respect to actions taken
31 in compliance with the Code chapter, the public fund shall
32 be exempt from any conflicting statutory or common law
33 obligations, including any such obligations in respect to
34 choice of asset managers, investment funds, or investments for
35 the public fund's securities portfolios.

1 The bill provides that the provisions related to the
2 creation of a scrutinized companies list, divestment of
3 publicly traded securities of a prohibited company, and
4 reporting shall not apply if the United States congress
5 or president of the United States declares that mandatory
6 divestment of the type provided for in this chapter interferes
7 with the conduct of United States foreign policy, or a
8 controlling circuit or district court of the United States
9 issues an opinion that declares the mandatory divestment of
10 the type provided for in the Code chapter or similar statutes
11 of other states is preempted by the federal law of the United
12 States.

13 The bill makes conforming changes to Code sections 12.8,
14 97A.7, 97B.4, 262.14, 411.7, and 602.9111.